

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

In the Matter of

Petition for Arbitration of an Interconnection  
Agreement Between Charter Fiberlink MA-  
CCO, LLC, and Verizon Massachusetts Inc.

D.T.E. Docket No.: 06-56

**SUPPLEMENTAL RESPONSE OF VERIZON MASSACHUSETTS**

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**I. Introduction and Summary.**

As explained in the Response of Verizon Massachusetts Inc. (“Verizon MA”), Charter’s Petition for Arbitration<sup>1</sup> asks the Department to arbitrate issues that were resolved during the parties’ negotiations, as well as new issues that were never discussed during the parties’ negotiations. Indeed, Charter has included an entirely new proposed fiber amendment with its petition that was never shared with Verizon MA during the negotiations. In addition, some of the provisions in Charter’s new proposed fiber meet amendment do not even relate to any of the issues listed in Charter’s Petition.

Verizon MA has moved to dismiss Charter’s Petition on the grounds that it violates the negotiation and arbitration process mandated in the Telecommunications Act of 1996 (“Act”). The Department should grant that motion. However, if the Department proceeds with the arbitration on the basis of Charter’s new proposed fiber meet

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<sup>1</sup> Petition of Charter Fiberlink MA-COO, LLC for Arbitration of an Amendment to the Interconnection Agreement Between Verizon Massachusetts Inc. and Charter Fiberlink MA-CCO, LLC Pursuant to Section 252 of the Communications Act of 1934, as Amended filed June 22, 2006 (“Charter Petition”).

amendment, it should resolve additional issues that were not listed in Charter's Petition. During the prehearing conference, the arbitrator granted Verizon MA leave to file this supplemental response to raise these additional issues.

First, Charter proposes that fiber meet arrangements and associated trunking be subject to fixed time intervals regardless of whether Charter has met its milestones in the construction of the fiber meet arrangement and regardless of the number of trunks requested by Charter. This is patently unreasonable. Any fixed time intervals for the constructions of a fiber meet arrangement should be subject to Charter meeting its milestones in the construction of the fiber meet arrangement. In addition, there should be reasonable limits on the number of trunks to be provisioned within the fixed time intervals and request beyond those reasonable limits should be subject to negotiations.

Second, Charter proposes that a party must petition the Department for relief from the fixed time intervals even in specific situation where the parties are willing to agree to modify those intervals. There is no reason to burden the Department in these situations. If the parties agree to modify an interval, there is no reason for one of the parties to petition the Department.

Third, Charter proposes several provisions that are very similar to other provisions in its new proposed fiber meet amendment or in the parties' underlying interconnection agreement. Having two (or more) contract provisions addressing the same subject matter but with slightly different wording is confusing and will likely lead to disputes over contract interpretation. The Department should therefore reject these repetitive provisions, as they create needless ambiguity.

**II. Charter's New Proposed Fiber Meet Amendment Raises Issues That Were Not Listed in Its Petition.**

Exhibit B to Charter's Petition is a new proposed fiber meet amendment that differs substantially from Charter's final proposed fiber meet amendment provided to Verizon MA during the negotiations. As explained in Verizon MA's Motion to Dismiss, it is a violation of the Act's negotiation and arbitration provisions for Charter to (1) re-open issues that were closed during the negotiation and (2) propose entirely new contract language – that raises new issues for the first time in its arbitration petition. Accordingly, the Department should dismiss the petition, as requested by Verizon MA.

If the Department nonetheless proceeds with this arbitration on the basis of Charter's new proposed fiber meet amendment, the Department should address the following additional issues that were not listed in Charter's Petition. Verizon MA has also attached its own new draft fiber meet amendment to this supplemental response (Exhibit 3), which shows Verizon MA's counterproposal to specific provisions of Charter's new proposed fiber meet amendment.<sup>2</sup>

**Verizon MA's Issue 1:      The Deployment of Fiber Meet Arrangements and Associated Trunking Within Fixed Time Intervals Should Be Subject to Reasonable Conditions, Such As Charter's Completion of Certain Milestones During the Construction of the Fiber Meet Arrangement**

**Verizon MA's Response:** In Section 2.1.4 of Exhibit B, Charter proposes specific intervals for establishing fiber meet facilities and associated trunking. In particular, Charter proposes that "Fiber Meet facilities shall be established within 120

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<sup>2</sup> Where Verizon MA does not have a significant dispute with Charter's new proposed contract language, Verizon MA has included it in Exhibit 3, attached hereto, either verbatim or with minor modifications.

days from the initial implementation meeting which shall be held within 10 business days of the receipt by Verizon of [Charter]’s complete and accurate response to the Verizon Fiber Meet questionnaire.” Charter Petition, Exhibit B, Section 2.1.4. Charter’s proposal is unreasonable because, among other things, it fails to recognize the need for Charter to meet certain milestones in the construction of a fiber meet arrangement. For example, if Charter fails to provision its portion of the fiber facilities until day 119, it will not be possible for the parties to activate their respective electronics on the fiber meet arrangement and complete the testing of those electronics in a single day.

Any deadline for the establishment of a fiber meet arrangement should be contingent on Charter meeting its construction milestones on time. Verizon MA proposes that the following language be included in the parties’ fiber meet amendment. “The timeframes specified in this Section 2.6 are contingent upon [Charter]’s completing its milestones agreed to at the Initial Implementation meeting on time.” *See* Exhibit 3, Section 2.6.

Charter also proposes that “the provisioning for necessary facilities and associated trunk groups ---- within [sic] 60 business days after the Mid-Span facilities are established.” Charter Petition, Exhibit B, Section 2.1.4. Charter’s proposal is unreasonable because it sets no limit on the number of facilities or trunks that could be subject to the 60 business day interval. In fact, the next sentence proposed by Charter suggests that there should be some limit, but Charter did not propose such a limit: “Intervals for trunks *beyond the specified limits* shall be negotiated by the Parties and agreed to in writing at the Initial Implementation Meeting.” *See* Charter Petition, Exhibit B, Section 2.1.4 (*emphasis added*).

Any fixed interval for provisioning facilities or associated trunks should be subject to some reasonable limit on the number of such facilities or trunks. Verizon MA proposes that “the provisioning for the DS3 facilities and the trunk groups up to 10 new trunk groups or 1440 switched trunks, [occur] within 60 business days after the facilities are established.” *See* Exhibit 3, Section 2.6. If either party requests a greater number of facilities or trunks, such request would be subject to negotiated intervals: “Intervals for facilities and trunks beyond the specified limits shall be negotiated by the Parties and agreed to in writing at the Initial Implementation Meeting.” *See* Exhibit 3, Section 2.6.

For these reasons, the Department should find that Verizon MA’s proposed language on intervals is reasonable and should be included in the parties’ fiber meet amendment. *See* Exhibit 3, Section 2.6.

**Verizon MA’s Issue 2:        The Parties Should Be Able to Agree to Modify Fixed Time Intervals for Provisioning the Fiber Meet Arrangement and Associated Facilities and Trunks.**

**Verizon MA’s Response:** In Section 2.1.5 of Exhibit B, Charter proposes that “[w]here there are exceptional circumstances that prevent either Party from meeting their deadlines under this Section, either Party shall have the right to petition the Department for relief from the timeframes set forth above.” Charter Petition Exhibit B, Section 2.1.5. Charter’s proposal is too restrictive because it forces a party to seek relief from the Department even where the parties agree that the interval should be modified. For example, a few days before the deadline, a party might discover that some of its fiber meet equipment is defective and cannot be repaired for at least a week. If the other party is willing to allow additional time to repair the equipment, there is no reason to require the first party to petition the Department for relief from the deadline. It is only where the

parties are unable to agree on a modification of the deadline that a petition should be filed with the Department.

Verizon MA proposes that intervals and deadlines in the fiber meet amendment can be modified by agreement of the parties:

Where there are exceptional circumstances that prevent either Party from meeting their deadlines under Section 2.6, the Parties shall negotiate in good faith modifications to such deadlines. If the Parties are unable to agree upon modifications to such deadlines, either Party shall have the right to petition the Department for relief from the timeframes set forth in Section 2.6

See Exhibit 3, Section 2.7. Verizon MA's proposal would enable the parties to manage their interconnection arrangements on a business-to-business basis and involve the Department only where the parties are unable to reach agreement.

For these reasons, the Department should find that Verizon MA's proposed language on modifying provisioning intervals is reasonable and should be included in the parties' fiber meet amendment. *See* Exhibit 3, Section 2.7.

**Verizon MA's Issue 3:      The Parties' Fiber Meet Amendment Should Not Include Provisions That Are Repetitive of Other Provisions in the Amendment or the Parties' Underlying Interconnection Agreement.**

**Verizon MA's Response:** In several sections of Exhibit B, Charter proposes provisions that are very similar to other provisions in its new proposed fiber meet amendment or in the parties' underlying interconnection agreement. Having two contract provisions that address the same subject matter but with slightly different wording will likely create disputes over contract interpretation. Where a contract has two provisions with slightly different wording that the parties intend to have exactly the same meaning, a



judge or an arbitrator interpreting those two provisions may ascribe unique meaning to each provision on the grounds that the parties would not likely have included two separate provisions intended to say the same thing. In addition, a judge or an arbitrator may focus on the wording differences between the two provisions and find a conflict between those two provisions. To avoid these problems of contract ambiguity and interpretation, the Department should reject Charter's new proposed provisions that are repetitive with other provisions in the amendment or in the parties' interconnection agreement.

First, in Section 2.1.3 of Exhibit B, Charter proposes that the parties reach agreement on a list of technical and implementation issues in a written document entitled "Implementation Provisions."

[T]he Parties agree to work together on routing, appropriate sizing and forecasting, equipment, ordering, provisioning, maintenance, repair, testing, augment, and any other arrangements necessary to implement the Mid-Span Fiber Meet arrangement and associated interconnection trunking ("Implementation Provisions"). The Implementation Provisions shall be agreed to by the Parties in writing an [sic] initial implementation meeting.

Charter Petition, Exhibit B, Section 2.1.3. This provision is very similar to Section 2.2 of Exhibit B where Charter again proposes that the parties reach agreement on a list of technical and implementation issues, but in a written document entitled "Technical Specifications and Requirements."

[T]he establishment of any Fiber Meet arrangement is expressly conditioned upon the Parties' mutually agreeing to the technical specifications and requirements for such Fiber Meet arrangement including, but not limited to, the location of the Fiber Meet points, routing, equipment (e.g., specifications of Add/Drop Multiplexers, number of strands of fiber, etc.), software, ordering, provisioning,

maintenance, repair, testing, augments and/or any other technical specifications or requirements necessary to implement the Fiber Meet arrangement. For each Fiber Meet arrangement the Parties agree to implement, the Parties will complete and sign a Technical Specifications and Requirements document, the form of which is attached hereto as Exhibit A. Each such document will be treated as confidential information.

Charter Petition, Exhibit B, Section 2.2. In their negotiations, Verizon MA and Charter agreed on this language, with the exception of Charter's proposal to replace "Add/Drop Multiplexers" with "SONET Terminals" (which is subject to resolution in this proceeding with respect to Charter's Issue No. 5). *See* Exhibit 3, Section 2.2.

Because the parties have essentially agreed on using a Technical Specifications and Requirements document for technical and implementation issues,<sup>3</sup> there is no reason to include Charter's proposed Section 2.1.3 in their fiber meet amendment. Charter's proposed Section 2.1.3 is repetitive because it would require the parties to prepare a second document – Implementation Provisions – that would address the same issues that the parties are already addressing in the Technical Specifications and Requirements document. The Department should therefore reject Charter's proposed Section 2.1.3.

Second, in Section 2.1.2 of Exhibit B, Charter proposes that each party bear its own expenses for building and maintaining each fiber meet arrangement.

For each Fiber Meet arrangement that is established between the Parties, each Party agrees to bear all expenses associated with the purchase of appropriate equipment, materials, or services necessary to facilitate and maintain such Fiber Meet arrangement on its side of the POI.

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<sup>3</sup> Compare Charter's Petition, Exhibit B, Section 2.2 to Verizon MA's Exhibit 3, Section 2.2. The only difference between the Charter's proposal and Verizon MA's proposal is subject to Charter's Issue No. 5 in this proceeding.

Charter Petition, Exhibit B, Section 2.1.2.

This provision is similar to another provision (i.e., Section 2.4) in Charter's new proposed fiber meet amendment. In Section 2.4 of Exhibit B, Charter proposes that the parties bill each other applicable intercarrier compensation charges in connection with each Fiber meet arrangement:

Notwithstanding any other provision of the Agreement (including, without limitation, this Amendment) or otherwise, other than the obligation to pay any applicable intercarrier compensation charges pursuant to the terms of the Agreement, neither Party shall have any obligation to pay the other Party any charges in connection with any Fiber Meet arrangements established under this Amendment.

*See* Charter Petition, Exhibit B, Section 2.4. Verizon MA and Charter agreed on this language, with the exception of a parenthetical that is subject to resolution in this proceeding with respect to Charter's Issue No. 4. *See* Exhibit 3, Section 2.4.<sup>4</sup>

Because the parties have essentially agreed on language stating that only intercarrier compensation charges will apply to each fiber meet arrangement, there is no reason to include Charter's proposed second sentence of Section 2.1.2 in the parties' amendment. Charter's proposed second sentence in Section 2.1.2 is not only repetitive, but it could be interpreted as contradicting Section 2.4 and the application of intercarrier compensation charges to traffic exchanged over a fiber meet arrangement.<sup>5</sup> The Department should therefore reject Charter's proposed second sentence of Section 2.1.2,

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<sup>4</sup> The parties are also disputing other language in Section 2.4 and that dispute is also subject to resolution in this proceeding with respect to Charter's Issue No. 4.

<sup>5</sup> The potential for conflicting interpretations is compounded by Charter's proposal to include the following language in Section 6.3 of Exhibit A to the parties' fiber meet amendment: "Notwithstanding this obligation, as set forth in the attached Amendment, neither Party shall have any obligation to pay the other Party any charges in connection with any Fiber Meet arrangements established under this Amendment." Charter Petition, Exhibit B, Exhibit A at Section 6.3.

as well as Charter's proposed related addition to Section 6.3 of Exhibit A of the parties' fiber meet amendment.<sup>6</sup>

Third, in Section 2.1.2 of Exhibit B, Charter proposes language on interference and impairment. In particular, Charter proposes that:

Neither Party shall take any action which is likely to impair or interfere with the other Party's use of its allotted facilities.

Charter Petition, Exhibit B, Section 2.1.2.

This provision is repetitive of a provision (i.e., Section 26.2) in the parties' underlying interconnection agreement. Section 26.2 of the parties' interconnection agreement already addresses interference and impairment:

Each Party recognizes a responsibility to follow the standards that may be agreed to between the Parties and to employ characteristics and methods of operation that will not interfere with or impair the service, network or facilities of the other Party or any third parties connected with or involved directly in the network or facilities of the other.

*See* Interconnection Agreement adopted by Charter on February 27, 2004, Section 26.2.

Because the parties' underlying interconnection agreement already contains comprehensive language governing interference and impairment, there is no reason to include Charter's proposed third sentence of Section 2.1.2 in the parties' fiber meet amendment. The Department should therefore reject Charter's proposed third sentence of Section 2.1.2.

Fourth, in Section 2.1.6 of Exhibit B, Charter proposes language on maintaining a reliable network and exchanging relevant information:

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<sup>6</sup> *Id.*

CLEC and Verizon shall work cooperatively to install and maintain a reliable network as agreed pursuant to Section [INSERT]. CLEC and Verizon shall exchange appropriate information (e.g., maintenance contact numbers, information related to the jointly constructed network configuration, information required to comply with law enforcement and other security agencies of the Government and such other information as the Parties shall mutually agree).

Charter Petition, Exhibit B, Section 2.1.6.

This provision is repetitive of Section 26.1 of the parties' interconnection agreement, which contains essentially the same language that Charter proposes in Section 2.1.6 of Exhibit B:

The Parties will work cooperatively in a commercially reasonable manner to install and maintain a reliable network. [Charter] and Verizon will exchange appropriate information (e.g., network information, maintenance contact numbers, escalation procedures, and information required to comply with requirements of law enforcement and national security agencies) to achieve this desired reliability.

See Interconnection Agreement adopted by Charter on February 27, 2004, Section 26.1. Because the parties' interconnection agreement already contains comprehensive language governing network reliability and the like, there is no reason to include Charter's proposed Section 2.1.6 in the parties' fiber meet amendment. The Department should therefore reject Charter's proposed Section 2.1.6.

Fifth, in Section 2.1.7 of Exhibit B, Charter proposes language on network management to avoid traffic congestion:

CLEC and Verizon shall work cooperatively to apply sound network management principles and network management controls to alleviate or to prevent congestion.

Charter Petition, Exhibit B, Section 2.1.7.

Here again, Charter includes a provision (i.e., Section 26.2) that is repetitive of another provision in the parties' underlying interconnection agreement. Section 26.2 of the Parties' interconnection agreement contains essentially the same language that Charter proposes in Section 2.1.7 of Exhibit B:

[T]he Parties will work cooperatively in a commercially reasonable manner to apply sound network management principles to alleviate or to prevent traffic congestion . . . .

*See* Interconnection Agreement adopted by Charter on February 27, 2004, Section 26.1.

Because the parties' underlying interconnection agreement already contains comprehensive language governing network management and traffic congestion, there is no reason to include Charter's proposed Section 2.1.7 in the parties' fiber meet amendment. The Department should therefore reject Charter's proposed Section 2.1.7.

### **III. CONCLUSION**

The Department should dismiss Charter's Petition for Arbitration because none of the issues listed in its petition were open as a result of the parties' negotiations. If the Department nonetheless proceeds with arbitration, the Department should order that the parties' fiber meet amendment include all of the language proposed by Verizon MA (Exhibit 3) and none of the language that Charter has proposed and which Verizon MA has explained, in this Supplemental Response, is repetitive (and in some cases ambiguous).

Respectfully submitted,

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